Supreme Court, U.S.
FILED

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Case No. ____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1996

BLACK TELEVISION WORKSHOP OF LOS ANGELES, INC. AND ARNOLD L. KUPETZ, TRUSTEE IN BANKRUPTCY, Petitioners

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, Respondents

---

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the actions of the Federal Communications Commission in revoking the construction permit of Black Television Workshop of Los Angeles, Inc. are subject to the automatic stay provisions of the Federal Bankruptcy Code, pursuant to 11 U.S.C. Section 362 (a), or are otherwise subject to stay pursuant to 11 U.S.C. Section 105 (a); and

Whether the ruling of the D.C. Circuit, in question, in not staying the revocation of the permit of Black Television Workshop, is in conflict with the policies of the FCC, in conflict with prior decisions of the D.C. Circuit, in conflict with decisions of other circuits, in conflict with precedent of the U.S. Supreme Court, and in conflict with the Congressional legislative history underlying the Federal Bankruptcy Code, thus requiring remand to the FCC, in order for the U.S. Bankruptcy Court, which has jurisdiction over the assets of Black Television Workshop, including the construction permit granted to it by the FCC, to implement the policies of the Federal Bankruptcy Code protecting creditors?

PARTIES TO THE PROCEEDING

The following persons were also parties to the appeal before the United States Court of Appeals for the D.C. Circuit whose orders and rulings are sought to be reviewed:

Rosa Ware
Booker T. Wade, Jr.
Gwendolyn May
Hope Smith Bynum
Mary V. Woodfork

Black Television Workshop of Los Angeles, Inc. is a California non-profit and non-stock corporation, which was incorporated in 1981. It is governed by a multi-member board of directors. The corporation is not publicly owned, nor is it affiliated with any other entity. It has no parent company or subsidiaries. No debt securities have been publicly issued. The sole activity of the corporation is to engage in television broadcasting. On October 3, 1994, the corporation filed for bankruptcy protection in the Federal Bankruptcy Court for the Central District of California. On February 23, 1995, the case was converted to Chapter 7 and Arnold L. Kupetz, Esq. was named Trustee (Case No. SV 94-45938KL).

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the D.C. Circuit, in conflict with decisions of other circuits, in conflict with precedent of this Court, and in conflict with the Congressional legislative history underlying the Federal Bankruptcy Code.

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Case No. ____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1996

BLACK TELEVISION WORKSHOP OF LOS ANGELES, INC. AND ARNOLD L. KUPETZ, TRUSTEE IN BANKRUPTCY, Petitioners

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, Respondents

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The interlocutory order, final judgment, and orders on rehearing and hearing in banc of the U.S. Court of Appeals for the D.C. Circuit denying the relief requested by the petitioners are cited in the Table of Authorities and are included in the Appendix. The orders and judgment of the D.C. Circuit are unreported.

JURISDICTION

The D.C. Circuit entered an interlocutory order denying a motion to remand on December 5, 1994. A petition for rehearing and suggestion for hearing in banc as to the motion to remand was denied on March 17, 1995. A final judgment in the case was entered on September 18, 1995. The petitioners' motion for substitution of parties, motion to remand, and petition for rehearing and suggestion for hearing in banc was denied on November 17, 1995 (Case No. 94-1031 and Consolidated Case No. 94-1655). The jurisdiction of this Court is timely invoked under 28 U.S.C. Section 1254 (1). By letter of February 15, 1996, the Clerk of this Court granted petitioners' leave to refile their brief by April 15, 1996. The Solicitor General and the FCC have been served with this petition for writ.

STATUTORY PROVISIONS

11 U.S.C. 105 (a)

11 U.S.C. Section 362 (a) and (b)

47 U.S.C. Section 301

STATEMENT OF THE CASE

In 1983, the Federal Communications Commission ("FCC") granted to Black Television Workshop of Los Angeles, Inc. ("Workshop"), as a corporation, a construction permit for non-commercial television channel 68 in Los Angeles. Initial Decision of ALJ Walter C. Miller, FCC 83D-13, rel. Feb. 24, 1983. Workshop is a California chartered non-stock and non-profit corporation which is governed by a multi-member board of directors. All of the directors are African-Americans (App. G, pp. 13a, 15a, 18a).

In Hearing Designation Order ("HDO"), 3 FCC Rcd 5443 (1988), the FCC designated for revocation the construction permit of the corporation. The HDO was based upon a purported unauthorized transfer of control and/or unauthorized control of the corporation because of a change and/or deletion of directors of the corporation without prior FCC approval. The HDO also raised unspecified issues of misrepresentation and/or lack of candor by persons who were current or former directors of the corporation, or who had served as corporate counsel.

The Initial Decision of ALJ Joseph Chachkin ("Initial Decision"), 7 FCC Rcd 7819, 7833-7834 (1992) revoked the construction permit of the corporation. In Decision, 8 FCC Rcd 4192 (1993); Memorandum Opinion and Order, 8 FCC Rcd 8719 (1993); and Order,

9 FCC Rcd 4477 (1994), the FCC affirmed the Initial Decision. Therein, it issued a final agency decision revoking the permit of the corporation.

An appeal of the revocation was filed by current directors of the corporation with the U.S. Court of Appeals for the District of Columbia Circuit on October 3, 1994 (Case No. 94-1655). A separate appeal was filed by Mary V. Woodfork, a former director of the corporation, who was personally disqualified (Case No. 94-1031). The jurisdiction of the D.C. Circuit was pursuant to 47 U.S.C. Section 402 (b)(1), (5), and (6), and 28 U.S.C. 2342 (1).

On October 3, 1994, Workshop, as a corporate entity, filed for bankruptcy protection in the United States Bankruptcy Court for the Central District of California, Los Angeles (Case No. SV 94-45938KL), pursuant to Chapter 11 of the Federal Bankruptcy Code. On February 23, 1995, the case was converted to Chapter 7. Arnold L. Kupetz, Esq., was appointed Trustee (App. H, pp. 19a-20a).

Workshop, through its current directors, filed with the D.C. Circuit a motion to remand. Therein, it requested that the case, with respect to the corporation, be remanded to the FCC to allow the U.S. Bankruptcy Court to take jurisdiction, pursuant to an automatic stay, in order to protect the creditors of the corporation. The FCC opposed the motion to remand. It disputed the

applicability of the automatic stay and the jurisdiction of the U.S. Bankruptcy Court.

In Order, Case No. 94-1031 and Consolidated Case No. 94-1655, filed December 5, 1994, the D.C. Circuit held that the actions of the FCC in revoking a license or construction permit are excepted from the automatic stay provisions of the Federal Bankruptcy Code, 11 U.S.C. Section 362 (b)(4) and (5). No explanation or rationale was given. The decision was not published (App. A, p. 2a).

A petition for rehearing and suggestion for hearing in banc was filed with respect to the motion to remand. This petition was denied by the D.C. Circuit in Order, Case No. 94-1031 and Consolidated Case No. 94-1655, filed March 17, 1995. No explanation or rationale was given. The order was not published (App. B, p. 4a).

In Judgment, Case No. 94-1031 and Consolidated Case No. 94-1655, filed September 18, 1995, the D.C. Circuit affirmed the revocation of the construction permit of Workshop and affirmed the personal disqualification of Woodfork, along with other named parties, who are current or former directors of the corporation. The explanation or rationale given was that there is "ample evidence on the record to support the FCC's decisions." The Judgment was not published (App. C, pp. 5a-8a).

Arnold L. Kupetz, Trustee in Bankruptcy, filed a motion for substitution of parties and for remand. Therein, the Trustee requested that he be substituted for the corporation as a party in view of his appointment as Trustee in Bankruptcy. Moreover, the Trustee requested that the proceeding be remanded to the FCC with respect to the corporation in order to allow the U.S. Bankruptcy Court to assume jurisdiction to protect the creditors of the corporation.

A petition for rehearing and suggestion for hearing in banc with respect to the Judgment was filed by the corporation and by the current directors. In separate Orders, Case No. 94-1031 and Consolidated Case No. 94-1655, filed November 17, 1995, the D.C Circuit denied the motion of the Trustee and the petition for rehearing and suggestion for hearing in banc. According to the D.C. Circuit, the issues raised by the Trustee had previously been decided (App. D, p. 9a). No explanation or rationale was given for denial of the petition for rehearing and the suggestion for hearing in banc (App. E and F, pp. 10a-11a). The orders were not published.

REASONS FOR GRANTING THE PETITION

The petition for writ of certiorari raises an important Federal question of law as to whether the actions of the FCC in revoking a construction permit or license are subject to the automatic stay provisions of the Federal Bankruptcy Code, pursuant to 11 U.S.C. Section 362 (a), or are otherwise subject to stay pursuant to 11 U.S.C. Section 105 (a), and whether the ruling of the D.C. Circuit, in question, is in conflict with the policies of the FCC, in conflict with prior decisions of the D.C. Circuit, in conflict with decisions of other circuits, in conflict with precedent of this Court, and in conflict with the Congressional legislative history underlying the Federal Bankruptcy Code.

The petition for writ of certiorari raises an important Federal question of law as to whether the actions of the FCC in revoking the construction permit of Black Television Workshop of Los Angeles, Inc. are subject to the automatic stay provisions of the Federal Bankruptcy Code, pursuant to 11 U.S.C. Section 362 (a), or are otherwise subject to stay pursuant to 11 U.S.C. 105 (a), and whether the ruling of the D.C. Circuit, in question, is in conflict with the policies of the FCC, in conflict with prior decisions of the D.C. Circuit, in conflict with decisions of other circuits, in conflict with precedent of this Court, and in conflict

with the Congressional legislative history underlying the Federal Bankruptcy Code. The *D*.C. Circuit declined to give an explanation or rationale for its ruling.

The question as to whether an automatic stay applies to an FCC permit or license revocation action has a substantial impact on the telecommunications and media industry and thus requires a consistent application of the law. A number of FCC regulated businesses, such as broadcast stations, file for Federal bankruptcy protection.

The Communications Act, 47 U.S.C. Section 301, creates a limited property right in a construction permit (App. K, p. 24a). It is a "thing" of value and becomes property of the debtor estate at the time of filing of the bankruptcy petition. L.B. Wilson, Inc. v. FCC, 170 F.2d 793, 798 (D.C. Cir. 1948); State of Missouri v. U.S. Bankruptcy Court, 647 F.2d 768, 774 (8th Cir. 1981), cert. denied, 454 U.S. 1162 (1982). The construction permit, in question, was issued by the FCC to Workshop, as a corporate entity. Initial Decision of ALJ Walter C. Miller, FCC 83D-13 (App. G, p. 15a, 18a).

The FCC permit or license is in almost all cases the most valuable asset of a broadcaster debtor estate. In situations where there is a permit or license revocation action by the FCC, a stay of that action must be effectuated in order for the bankruptcy courts to

protect creditors.

The Congressional legislative history underlying the Federal Bankruptcy Code states that an automatic stay is to apply to actions of Federal agencies, unless the stay would threaten public health or safety, or interfere with enforcement of that agency's police or regulatory powers. Fugazy Express, Inc., 114 B.R. 865, 873 (Bk. S.D.N.Y. 1990), 124 B.R. 426, 431 (S.D.N.Y 1991), appeal dismissed, 962 F.2d 769 (2nd Cir. 1992), citing 124 Cong. Rec. H 11,092 (Sept. 28, 1978); 124 Cong. Rec. S 17,409 (Oct. 6, 1978). See also, 11 U.S.C. Section 362 (a)(1), (2), and (3) of the Federal Bankruptcy Code, which provides for a stay of governmental actions and proceedings against the debtor estate, including judicial or administrative actions (App. J, p. 22a).

The exemption to a stay in order for a governmental agency to enforce its police or regulatory powers is codified in 11 U.S.C. Section 362 (b)(4) and (5) (App. J, p. 23a). However, as noted in the Congressional legislative history, that exception is to be read narrowly so as to permit an agency only to protect public health and safety and not to protect its pecuniary interest in the permit or license. Fugazy Express, Inc., 124 B.R. at 431.

The term "police or regulatory power" refers to the enforcement of laws affecting health, welfare,

morals, and safety, but not regulatory laws that directly conflict with control of the res or property by the bankruptcy court. State of Missouri v. U.S. Bankruptcy Court, 647 F.2d at 776, citing 124 Cong. Rec. H 11,089 (Sept. 28, 1978). The FCC's revocation of the construction permit of Workshop directly conflicts with control of the property of the debtor estate by the U.S. Bankruptcy Court. The FCC has already adjudicated the issues of violation of its rules and thus has exercised its police powers. Deprivation of the rights of creditors does not further the exercise of the FCC's police powers.

Accordingly, there is no exemption to the stay under the Federal Bankruptcy Code for FCC revocation actions. Thus, the permit of Workshop could not be revoked without the permission of the U.S. Bankruptcy Court, which has jurisdiction over the debtor corporation and its estate. Fugazy Express, Inc., 114 B.R. at 873; 124 B.R. at 431.

In other circuits, the Courts have held that the automatic stay does not apply to some Federal agencies. Nevertheless, bankruptcy courts are permitted, pursuant to 11 U.S.C. Section 105 (a), to stay actions of Federal agencies which threaten property of the debtor estate (App. I, p. 21a). NLRB v. Edward Cooper Painting, Inc., 804 F.2d 934, 941 (6th Cir. 1986). The revocation action of the FCC threatens the permit of Workshop, which is property of the debtor estate.

The policy of the FCC is to concur with a stay of its revocation actions and to defer to the jurisdiction of the bankruptcy courts. This is done in order to protect creditors so long as alleged or adjudicated FCC wrongdoers are not unduly benefitted. Second Thursday Corporation, 22 FCC2d 515 (1970), recon. granted, 25 FCC2d 112 (1970).

A stay of a revocation action is consistent with FCC policy even in situations of egregious misconduct by a broadcast licensee, such as a Federal felony conviction for drug dealing, which otherwise would mandate revocation of the broadcast license. Walter S. Kelly, Trustee, 9 FCC Rcd 1923 (MMB 1994); New South Broadcasting, Inc., 8 FCC Rcd 1272 (1993), 6 FCC Rcd 5047 (1991). Because wrongdoers are not to benefit, such deferral to bankruptcy courts does not eviscerate or nullify the FCC's police powers and enforcement authority over broadcast stations.

The D.C. Circuit has heretofore upheld the FCC's policy of deferring to the jurisdiction of bankruptcy courts and has mandated the FCC to do so. LaRose v. FCC, 494 F.2d 1145, 1150 (D.C. Cir. 1974). As previously noted, in the Second Circuit, the bankruptcy courts have explicitly held that the automatic stay provisions apply to permit or license revocation actions by the FCC. Fugazy Express, Inc., 114 B.R. at 873; 124 B.R. at 431.

A stay of the FCC's revocation action is in accord with precedent in the Ninth Circuit, which has jurisdiction over the bankruptcy proceeding of Workshop. The filing of the bankruptcy petition automatically stays all actions against the debtor estate. In Re: Stucka, 77 B.R. 777, 782 (Bk. C.D. Calif. 1987). That stay may be lifted only to allow entry by the FCC of a judgment against Workshop as to rule violations, but not to allow enforcement by the FCC of a final judgment which would be detrimental to creditors. NLRB v. Continental Hagen Corp., 932 F.2d 828, 832 (9th Cir. 1991).

The FCC has already entered a judgment against Workshop as to certain rule violations and now seeks to enforce a final judgment by revoking its construction permit. However, the permit is the only source of funds for the creditors of the corporation. Thus, enforcement of the FCC's judgment is clearly detrimental to the creditors. State of Missouri, 647 F.2d at 776, automatic stay applies against actions of government agency seeking to protect its pecuniary interest, rather than to protect public safety or health.

Application of the automatic stay provisions of 11 U.S.C. Section 362 (a)(1), (2), and (3) to revocation actions of the FCC is in accord with the Court's holding in Board of Governors of the Federal Reserve System of the U.S. v. MCorp Financial, Inc., 502 U.S. 32, 41 (1991). Therein, the Court held that only certain

ongoing administrative hearings and agency actions to enforce cease and desist orders are excepted from the automatic stay provisions of 11 U.S.C. Section 362 (a) (App. J, p. 22a).

The Court explicitly excluded from its holding in MCorp judicial appeals of final agency actions which would adversely affect the license of a regulated business that has filed for Federal bankruptcy protection. The Court stated that if the administrative hearing or action results in a final agency order adversely affecting the license of the regulated business which has filed for Federal bankruptcy protection and if a judicial appeal of that final agency action is taken, then "it may well be proper" for a bankruptcy court to exercise its jurisdiction over the property of the debtor estate, including the government license. MCorp, 41.

This is the situation of Workshop. It was not involved in an ongoing administrative hearing or cease and desist action by the FCC, but rather was appealing a final agency order revoking its permit. Revocation is clearly detrimental to creditors since the permit is the only source of funds for payment to them.

Accordingly, the revocation of the construction permit of Workshop, a corporation which has filed for Federal bankruptcy protection, is subject to the automatic stay provisions of 11 U.S.C. Section 362 (a)(1), (2), and (3), which stays the action of the FCC

in revoking its permit (App. J, p. 22a). The FCC's actions are otherwise subject to stay pursuant to 11 U.S.C. Section 105 (a) (App. I, p. 21a). A stay would allow the Federal bankruptcy proceeding to go forward to protect creditors. Thus, a grant of certiorari and remand of the case to the FCC is requested in order for the U.S. Bankruptcy Court to exercise its proper jurisdiction and authority over the assets of the debtor estate, which include the construction permit granted by the FCC in 1983 to Workshop.

CONCLUSION

WHEREFORE, in view of the foregoing, the Court is requested to grant certiorari and review this case because of the conflicts in the lower courts and the conflict with Court precedent as to the Federal bankruptcy issue raised on appeal --- the applicability of an automatic stay, or other stay, to revocation actions of the FCC.

Respectfully submitted,

By:_____

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April 15, 1996

APPENDIX

APPENDIX A -- ORDER OF THE U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT, FILED DECEMBER 5, 1994

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1031 September Term, 1994

Mary V. Woodfork,
Appellant,

v.

Federal Communications Commission,
Appellee,
Booker T. Wade, Jr.; Rosa Ware;
Gwendolyn May; Hope Smith Bynum,
Intervenors.

94-1655

Black Television Workshop of Los Angeles, Inc.; Rosa Ware;
Booker T. Wade; Gwendolyn May;
Hope Smith Bynum,
Appellants,

v.

Federal Communications Commission,
Appellee,

APPENDIX A

Mary V. Woodfork,
Intervenor

BEFORE: Williams, Sentelle, and Rogers, Circuit Judges

ORDER

Upon consideration of the motion to consolidate, the motions for summary reversal, the opposition thereto and the replies; the motion for remand, the opposition thereto and the reply; the motion to defer briefing schedule, and the response thereto; and the motion for leave to file a motion for summary affirmance, the oppositions thereto, and the replies, it is

ORDERED that the motions for summary reversal be denied. The merits of the parties, positions are not so clear as to warrant summary action. See Cascade Broadcasting Group, Ltd. v.FCC, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). It is

FURTHER ORDERED that the motion for remand be denied. The Federal Communications Commission's action is excepted from the automatic stay provisions of the bankruptcy code. 11 U.S.C. § 362(b)(4). It is

APPENDIX A

FURTHER ORDERED that the motion for leave to file a motion for summary affirmance be denied. Movants have not justified their failure to file within the time set by the court's initial scheduling order filed January 27, 1994. It is

FURTHER ORDERED that the order filed October 6, 1994, establishing a briefing schedule and setting an argument date in No. 94-1031 be vacated. It is

FURTHER ORDERED that the motion to defer briefing schedule be dismissed as moot. It is

FURTHER ORDERED that the motion to consolidate No. 94-1031 with No. 94-1655 be granted.

The Clerk is directed to calendar the consolidated appeals for argument.

Per Curiam

FOR THE COURT:
Ron Garvin, Clerk
By: Cheri Carter, Deputy Clerk

APPENDIX B -- ORDER OF THE U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT, FILED MARCH 17, 1995

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1031 September Term, 1994

Mary V. Woodfork,
Appellant,
v.
Federal Communications Commission,
Appellee

BEFORE: Edwards, Chief Judge; Wald, Silberman, Buckley, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers and Tatel, Circuit Judges

ORDER

Appellants' Suggestion For Rehearing In Banc has been circulated to the full Court. No member of the Court requested the taking of a vote thereon. Upon consideration of the foregoing, it is

ORDERED, by the Court in banc, that the suggestion is denied.

Per Curiam
FOR THE COURT: Robert A. Bonner, Deputy Clerk

APPENDIX C -- JUDGMENT OF THE U.S COURT OF APPEALS FOR THE D.C. CIRCUIT, FILED SEPTEMBER 18, 1995

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1031 September Term, 1995

Mary V. Woodfork,
Appellant,
v.
Federal Communications Commission,
Appellee

Booker T. Wade, Jr., et al.,
Intervenors

Consolidated with No. 94-1655

Appeals of an Order of the
Federal Communications Commission
Before WILLIAMS, GINSBURG and RANDOLPH
Circuit Judges.

APPENDIX C

JUDGMENT

This case involves two consolidated appeals from a decision of the Federal Communications Commission to revoke the construction permit of Black Television Workshop of Los Angeles, Inc. ("BTW") for noncommercial educational UHF television station KEEF-TV, Channel 68, in Los Angeles, California. *Black Television Workshop of Los Angeles, Inc.*, 8 FCC Rcd 4192, *recon. denied*, 8 FCC Rcd 8719 (1993), *further recon. dismissed*, FCC 94I-013 (Feb. 15, 1994), *review denied*, 9 FCC Rcd 4477 (1994). These appeals were considered on the record from the FCC, on the briefs submitted by counsel, on oral argument, and on a statement for the record submitted by appellant BTW after oral argument. *See* D.C. Cir. Rule 28(g). After full review, the Court is satisfied that appropriate disposition of the appeals does not warrant an opinion. *See* D.C. Cir. Rule 36(b).

Appellants BTW and Rosa W. Ware, Booker T. Wade, Jr., Gwendolyn May, and Hope Smith Bynum ("Wade Group") contend that the FCC erroneously revoked BTW's construction permit and erroneously disqualified members of the Wade Group from inheriting it. Appellant Mary Woodfork contends that the FCC lacked sufficient record evidence on which to disqualify her from inheriting the permit. We find ample evidence on the record to support the FCC's

decisions with respect to all of these claims. *See Black Television Workshop of Los Angeles, Inc.*, 7 FCC Rcd 7819 (ALJ 1992).

Appellant Woodfork also contends that the FCC failed to respond to her claim that she was entitled to the application of an FCC policy excusing clients from the bizarre and unforeseeable conduct of their attorneys. While the FCC's treatment of appellant's contention is indeed condensed and of less than ideal clarity, 8 FCC Rcd. at 4200 n. 51, we will uphold such treatment if we can discern a "reasoned path from the facts and considerations before the Commission to the decision it reached." *Russian River Vintage Broadcasting v. FCC*, 5 F.3d 1518, 1521 (D.C. Cir. 1993), quoting *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 639 (D.C. Cir. 1984). *See also Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285-6 (1974), *reh. denied*, 420 U.S. 956 (1975). We find that a reasoned path does exist from the facts before the Commission to the dismissal of appellant's argument; appellant had significant warning signs rendering her attorney's behavior foreseeable long before her repudiation of him in late 1986. For example, appellant states that her attorney had her sign a blank ownership report in early 1985; she believed he falsely represented himself to be a BTW officer in her presence in 1985; she was never given a copy of BTW's purported by-laws - through which her attorney was orchestrating the

dismissal of BTW board members--after repeated requests in 1983. These facts set appellant's case well afield of FCC exceptions to its general policy that applicants are bound by counsel's actions. *Pontchartrain Broadcasting Co., Inc.*, 7 FCC Rcd 1898, 1903 (Rev. Bd. 1992), *review denied*, 8 FCC 2256 (1993), *aff'd*, 15 F.3d 183 (D.C. Cir. 1994).

Accordingly it is,

ORDERED and ADJUDGED, by the Court, that in No. 94-1655 and No. 94-1031 the decision by the FCC is affirmed.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely-filed petition for rehearing. *See* D.C. Cir. Rule 41(a).

FOR THE COURT:

Mark J. Langer, Clerk

BY: Deputy Clerk

APPENDIX D -- ORDER OF THE U.S COURT OF APPEALS FOR THE D.C. CIRCUIT, FILED NOVEMBER 17, 1995

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1031 September Term, 1995

Mary V. Woodfork,
Appellant,
v.
Federal Communications Commission,
Appellee

and Consolidated Case 95-1655

BEFORE: Williams, Ginsburg and Randolph, Circuit Judges

ORDER

Upon consideration of the Motion of the Bankruptcy Trustee For Substitution of Parties and for Remand, the response thereto and of the reply, it is

ORDERED, by the Court, that the motion is denied. This matter has already been resolved by a Special Panel of the Court.

Per Curiam

FOR THE COURT: Mark J. Langer, Clerk

APPENDIX E -- ORDER OF THE U.S.COURT OF APPEALS FOR THE D.C. CIRCUIT, FILED NOVEMBER 17, 1995

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1031 September Term, 1995

Mary V. Woodfork,
Appellant,

v.

Federal Communications Commission,
Appellee

and Consolidated Case 95-1655

BEFORE: Williams, Ginsburg and Randolph, Circuit Judges

O R D E R

Upon consideration of appellants' petition for rehearing filed November 1, 1995, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT: Mark J. Langer, Clerk

APPENDIX F -- ORDER OF THE U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT, FILED NOVEMBER 17, 1995

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1031 September Term, 1995

Mary V. Woodfork,
Appellant,
v.
Federal Communications Commission,
Appellee

and Consolidated Case 95-1655

BEFORE: Edwards, Chief Judge, Wald, Silberman, Buckley, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, and Tatel, Circuit Judges

O R D E R

Upon consideration of appellants' Suggestion for Rehearing In Banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the suggestion be denied.

Per Curiam

FOR THE COURT: Mark J. Langer, Clerk

APPENDIX G -- INITIAL DECISION, FEBRUARY 24, 1983

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of **FCC 83D-13**

CREATION HOUSE RESEARCH INSTITUTE OF SCIENCE AND TECHNOLOGY, INC.
Los Angeles, California

File No.BPET-810928KG

BLACK TELEVISION WORKSHOP OF LOS ANGELES, INC.
BC DOCKET NO. 82-191
Los Angeles, California
File No. BPET-811118KF

For Construction Permit

Appearances

Marshall G. Peters on behalf of Creation House Research Institute of Science and Technology, Inc.; and Booker T. Wade on behalf of Black Television Workshop of Los Angeles, Inc.

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INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE WALTER C. MILLER

Issued: February 15; Released: February 24, 1983

Preliminary Statement

1. Two mutually-exclusive applicants remain in this proceeding. Creation House Research Institute of Science and Technology, Inc. (Creation House) and Black Television Workshop of Los Angeles, Inc. (Workshop) each seek authority to construct a new educational television broadcast station on Channel 68, Los Angeles, California

2. After the prehearing interlocutory cycle had been completed, only the following noncommercial comparative issue remained (FCC 82M-2032 released June 29, 1982):

5. To determine:

(a) the extent to which each applicant's proposed operation will be integrated into the over-all cultural and educational objectives of the respective applicants;
(b) the manner in which each applicant's proposed operation meets the needs of the Community to be served;
(c) whether the facts in the record

demonstrates that one applicant will provide a superior noncommercial broadcast service.

3. The prehearing conference was held on June 11, 1982, the hearing was held on November 8, 1982; and the record was closed on November 23, 1982 (FCC 82M-3709). Both applicants filed Proposed Findings of Fact and Conclusions of Law on January 10, 1983; but only Workshop filed Reply Findings on January 21, 1983.

Preliminary Ruling

4. Although Creation House exchanged what it captioned an "Affirmative Case", none of its exhibits were received into evidence (Tr. 44-69). So Creation House has defaulted on its comparative issue. It has failed to meet its burden of proceeding on that issue. Accordingly, no comparative findings can be made on Creation House's proposal.

5. On the other hand, Workshop has presented a full comparative case. It identified and offered 15 comparative exhibits into evidence. All of those exhibits, except for one, were fully received into evidence, and that one (Workshop Ex. 6) was partially received. Moreover Black Workshop's proposal was subjected to cross-examination (Tr. 114-175). So the following findings of fact on Black Workshop's proposal are in order.

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Findings of Fact

Black Television Workshop of Los Angeles, California

6. Description. Black Television Workshop of Los Angeles, Inc. was incorporated on February 17, 1981 to provide quality educational television programming for the Los Angeles community. It's a non-profit corporation organized to operate a non-profit educational TV station in Los Angeles (Workshop Ex. 1; Workshop Ex. 15, pp. 1-2).

7. An eight-member Board of Directors governs the Workshop. All eight are Black Americans , and four of the eight are women. All of them are United States citizens. Seven of the eight currently reside within the station's proposed service area (Workshop Exs. 1 and 10).

8. One of the board members, Gary Cordell, will work at least 40 hours per week at the proposed station as the full-time General Manager (Workshop Ex. 9, p. 3). In addition the Workshop intends to organize four separate five-member advisory committees. Those committees will be made up of Los Angeles and service area residents. Those committees will advise on the following four topics: (1) promotion-syndications; (2) finance; (3) management; and (4) programming (Workshop Ex. 1, p. 2).

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9. Other Media Interests. Black Workshop doesn't control or own any interests in any medium of mass communications. However, it has applied for a non-commercial television translator/low power station to operate on Channel 68 in Los Angeles (Workshop Ex. 11, p. 1).

10. Two of Workshop's Directors, Rosa Ware and Titilola Payne own Seattle Community Television (Seattle). Seattle has been granted a CP to operate a low power television at Flagstaff, Arizona. Ware is 98% owner of Seattle and Payne owns the other 2%. Titilola Payne also has a CP to operate a television translator/low power television station in Knoxville, Tennessee (Workshop Ex. 11, p. 1).

11. Workshop's Proposed Programming. Workshop proposes to broadcast from 7:00 a.m. to 11:30 p.m. every day; i.e., 115 1/2 hours per week. This will include a minimum of 30 hours per week of locally produced programming, 12 1/2 hours per week of news and public affairs, and 2 1/2 hours per week of instructional programming.

12. Its primary programming objective, however, is to promote the educational and cultural needs of minority broadcast viewers. More specifically, it intends to broadcast a specialized format of programming by and about Black Americans that isn't currently available to the 1 million Blacks in

APPENDIX G

the Los Angeles market. Workshop will broadcast Black Programming from a minimum of 30% of its broadcast time up to 65%.

13. To further that objective Black Workshop has designed a number of programs to promote the educational and cultural needs of minority broadcast viewers: The Black Church, Black Film Review, Mahogany Television Family Portrait, Quiet Storm, and Black Entrepreneur. In all Workshop presently Proposes 41 hours of Black programming per week.

14. In addition to its minority directed programming, Black Workshop intends to put on programming addressed to the needs of women and children, and a schedule of PBS programs. Its educational program will include training for area residents (i.e., college students) in the use of communications media to express and promote their interests and those of the community.

Ultimate Findings and Preliminary Conclusions

1. Black Television Workshop of Los Angeles, Inc.'s application will be granted, and Creation House Research Institute of Science and Technology, Inc.'s application will be denied.

2. Creation House has failed to present a viable comparative case. So there is nothing to compare

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Black Workshop's proposal with. Black Workshop, on the other hand, has presented a proposal that will: (a) promote the educational and cultural needs of minority broadcast viewers; (b) present educational and informative programming directed to the non-minority (general) Los Angeles audience; (c) produce local programming that addresses the problems, needs, and interests of the Los Angeles co-unity; (d) provide quality children's programming; (e) inform and instruct and be a vehicle to better understanding between minority and non-minority Los Angeles residents; and (f) provide training in communications media for area residents.

Ultimate Conclusion

3. A grant of Black Workshop's application would serve the public interest. Its proposed non-profit operation will meet the needs of the Los Angeles community and provide a superior noncommercial broadcast service.

SO, unless an appeal is taken from this Initial Decision or the Commission reviews it on its own motion, Black Television Workshop of Los Angeles, Inc.'s application (BPET-811118KF) IS GRANTED; and Creation House Research Institute of Science and Technology, Inc.'s application (BPET-810928KC) IS DENIED.

Walter C. Miller, Administrative Law Judge

APPENDIX H -- CHAPTER 7 NOTICE, U.S BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA, DATED FEBRUARY 23, 1995

United States Bankruptcy Court
Central District of California
255 East Temple Street, Los Angeles, CA 90012
NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 7 OF THE BANKRUPTCY CODE, MEETING OF CREDITORS & FIXING OF DATES

(Corporation or Partnership. No Asset Case)

DEBTOR(S) INFORMATION: BANKRUPTCY
NO. SV94-45938-KL
BLACK TELEVISION WORKSHOP OF LA INC.
DATE FILED October 3, 1994
SSN: NA EIN: 94-7324567
ATTORNEY INFORMATION Pro Se
211 BRANNAN ST
SAN FRANCISCO, CA 94107

TRUSTEE INFORMATION:
MEETING OF CREDITORS, DATE, TIME AND LOCATION: ARNOLD KUPETZ, KUPETZ, SULMEYER, KUPETZ BAUMANN ETAL
10:00 A.M., March 31, 1995
300 S GRAND AVE, 14TH FLOOR
221 N. Figueroa St, Ste. 101, Los Angeles, CA 90012
LOS ANGELES, CA 90071 (213) 626-2311

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At this time there appear to be NO ASSETS available from which payment may be made to unsecured creditors.
Do not file a proof of claim unless you receive a court notice to do so.

COMMENCEMENT OF CASE: A petition for liquidation under chapter 7 of the Bankruptcy Code has been filed in this court by or against the debtor named above, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property and debts, are available for inspection at the office of the clerk of the bankruptcy court.

Dated: February 23, 1995.

For The Court, JON D. CERETTO, Clerk of Court

APPENDIX I -- FEDERAL BANKRUPTCY CODE

11 § 105

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

APPENDIX J -- FEDERAL BANKRUPTCY CODE

11 362. Automatic Stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5 (a) (3) of the Securities Investors Protection Act of 1970, operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement

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(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), does not operate as a stay-

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;

(3) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

APPENDIX K -- COMMUNICATIONS ACT OF 1934

47 § 301

§ 301. License for radio communication or transmission of energy

It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within